

**KOMMERSTAD CENTER SPEAKERS FORUM:  
SIX DECADES OF BUSINESS LAW**

JOHN MOOTY

Volume 3

2004

Number 1

The Kommerstad Center for Business Law and Entrepreneurship at the University of Minnesota Law School publishes the *Minnesota Journal of Business Law and Entrepreneurship* online at <http://www.kommerstad.org/journal/>. Hardcopy reprints are available for authors.

Submission requirements are on the Internet at  
<http://www.kommerstad.org/journal/submissions.html>.

Email: editor [at] kommerstad.org

Telephone: 612-624-5779

Minn. J. Bus. Law & Entrep.  
ISSN (1540-3270)



## Kommerstad Center Speakers Forum

### Six Decades of Business Law

JOHN MOOTY\*

Professor E. Thomas Sullivan:

This afternoon I have the pleasure to introduce a distinguished member of our community. When I was asked to give the introductory remarks, I realized I could speak for an hour about this man. But you didn't come to hear me -- you came to hear John Mooty. I thought about what kind of an introduction I can give a man who has such a distinguished reputation and background.

Three qualities came to mind -- impeccable judgment, integrity, and humility. John Mooty began his professional career at this law school and graduated in 1944. He has practiced law for 58 years with Gray Plant Mooty, Minneapolis's oldest continuous law firm. While John was not present at the creation of that firm in 1866, he certainly has been a foundation of the firm for 58 years.

He is one of the country's leading business transaction lawyers and I know from working with John that he is also a very astute litigator. He has, over those 58 years of practicing law, not just been a practicing lawyer -- he always has been, in addition, a businessperson. For over 30 years John was Chair of the Board of International Dairy Queen -- until Warren Buffet bought it a number of years ago. He has been a director of many corporations and an entrepreneur *par excellence* in real estate development.

We graciously greet him as our fourth lecturer in the Kommerstad Center for Business Law and Entrepreneurship Speakers Forum. It's wonderful to have him back at his *alma mater*. Please join me in a warm welcome home to John Mooty.

Mr. Mooty:

A fabulous overstatement.

\* John Mooty is well-known both in law and business circles. A graduate of the University of Minnesota Law School, he has been a principal at *Gray Plant Mooty Mooty & Bennett*, one of Minnesota's oldest and largest law firms for 58 years. He was responsible for the successful turnarounds of National Car Rental and International Dairy Queen.

It's been a long time since I went to my first class in this Law School. It's more than six decades ago and I still remember very vividly that first class. It was Property, taught by Dean Fraser. It wasn't very far into the first class when he said, "Take a good look at the person on your right, and take a good look at the person on your left, because when we get done there will only be one of the three of you left!"

That was when you were able to get into the school before they did a weeding process. I realize that now you have these profound tests and everybody who comes in is imminently qualified and brilliant students and you don't have to have the weeding-out process anymore.

In my time, that was of particular concern to me, because I came from a small junior college in the southwestern part of the state. You could get into law school with two years of pre-law and then take four years of law school. Or you could have an undergraduate degree and then take three years in law school. Some of the competition already had the four-year degree, so when I looked at odds of one out of three, my two years didn't exactly enhance my prospects.

I have to say that I immensely enjoyed the time in law school. I enjoyed that the faculty challenged you and how they made you think. I enjoyed it from the point of view of a student because students are a wonderful group of people, many of whom are going to be life-long friends. And whether you ever practice law, the fact that you have this training is valuable to you in all sorts of other areas you may decide to go into.

We'll just digress for just one second. We did have a professor whose name is displayed here on the Law School -- Stefan Riesenfeld. One day when I was working on the law review in the library Professor Riesenfeld came up to me and said, "Have you ever had a C in a course? What would you think if you got a C in my course?" Utilizing the maximum diplomacy, I said, "Well, you know, the way that course was taught, I'm not sure anybody could get more than a C." I will only say this -- when I finally did get my grade, I had to conclude that he had taught the course brilliantly.

While I was still in law school, I had the opportunity to do a research project on British law with the firm I'm still with. When I finally finished it, Dean Fraser said, "If you could end up with that firm, it would be a very good choice" As it turned out I spent my whole career there.

I'd like to tell you a couple of things about that experience which have been particularly beneficial and that I really appreciate. When I started, we had a managing partner, Harold Cant, who believed that everyone had a civic duty to participate in the affairs of the community.

He said, "Lawyers have an extra special duty to get involved in the community. They're equipped with tools that make them especially valuable." We were all encouraged to do that.

When I with the junior bar in Hennepin County, There was no bar referral service for people looking for an attorney. We thought that there ought to be one, and the junior bar decided to undertake it. And our firm was perfectly delighted to let us man the phones and run the initial sessions of the bar of reference which of course now is a very stable entity in Hennepin County and other counties. The firm gave me the opportunity to get involved.

I also had the privilege of working with another of the senior partners -- Frank Morley. Frank had an extensive business background and he had served on the board of major corporations. He was an absolutely brilliant lawyer, and it gave me an opportunity to see someone who is extremely skilled in the corporate area. I also got to see that, regardless of his achievements, he had no problem going into the library himself to fortify a brief he didn't think was persuasive enough.

At the time that I started, things were totally different than they are now in terms of specializations. At that time, if you were the last guy into the office, you worked on everything and anything. That might be researching antitrust in the morning, or it might be taking a trust account over to the court to get it approved in the afternoon. That had at least one advantage -- you did get a little bit broader base of looking at things than you have when you have to specialize. But in today's world there really isn't any choice. Look at the magnitude of environmental law or employment law or all sorts of other areas in the law today. The volume of law in one area is probably as great as the total volume of law around at the time I started out. So you really have to have a specialization, but it can cause you to have a little more concern about burn-out.

As I got involved in the practice of law, I had an opportunity to work with a couple of brothers by the names of Walter and Henry Baskerville who founded Upper Mississippi Towing Corporation for transporting petroleum products. Initially I worked with them as a lawyer, but as time went on they wanted me much more involved in business decisions. That gave me the opportunity to see things from the businessperson's point of view. Later, at National Car Rental and International Dairy Queen, I knew that problems look very different from the point of view of the businessperson than they do from the point of view of the lawyer. Sometimes I see that I'm looking as a businessperson at what some other lawyer is doing and I'm saying to myself, "Wait a minute, why are we going all the way around the horn? There must be a better way to do this than what we're doing." When

you're able to look both from the point of view of the business as well as from the point of view of the law, you bring a dimension to a problem that is extremely important.

Let me talk to you for a minute about National Car and International Dairy Queen. There are similarities in how we got involved with each. Both were insolvent when we got into the act, and both were depending largely on franchises. And unfortunately the franchises were developed by the franchisees. My brother-in-law, Ken Glaser, had the Twin Cities franchise for National Car Rental and he was desirous of maintaining a majority interest. I became an investor and got involved in it from the business point of view. We wanted to try to change the basic structure of National, because at that time it was literally a nonprofit association. But someone else was picked to do the job.

Well, they converted it to a for-profit company, but the for-profit company concept rapidly diminished, and the result was that they had a serious financial problem. Citizens State Bank in Atlanta, Georgia, said that if Ken would serve as chairman, they would stick with the project for a while. Ken said, "Fine, but not in New York -- we'll do it in Minnesota." So National came to Minnesota.

At that point we had the benefit of insolvency. General Motors had been forced by the government to divest itself of Hertz and they were the only major automobile manufacturer with no car rental agency connection. One of the initial fun little projects we had when we met in Detroit was to convince GM that helping an insolvent company was not a violation of their divestiture order. General Motors did a lot of wonderful things to launch National. By the time it was sold to Household Finance, it was even with Hertz and Avis.

Before National was sold to Household Finance, we had a call from the people who were running International Dairy Queen. They wanted to know whether they could acquire National. Well, we had some discussions on that, which went nowhere. A few years later we got another call. This time they said that they had some financial problems. Since we were the people who sold National to Household Finance they thought we might have some money we wanted to invest.

I spent an extensive amount of time reviewing the Dairy Queen situation and found that, as a franchisor, they had a lot of financial problems. We also found that the franchisees were very successful. If we could find some ways to straighten things out we had the basis to proceed. It was a good move. A number of years ago International Dairy Queen was merged into Berkshire Hathaway.

When we sold, we had three constituencies -- the shareholders, the employees and the franchisees. As far as the shareholders were

concerned, it seemed to make a lot of sense because it was a tax free exchange and they didn't have to take only Dairy Queen holdings.

The point of view of the employees was very important to us. We knew that whatever had been achieved was because of what the employees had done. Having been involved in a lot of mergers and acquisitions, I know full well that employees are always told that nothing will change. And what that really means though if you want to translate it into plain English is, nothing will happen until the cock crows, and then things do change. But one of the things that are very true about Warren Buffet is that that is not his strategy. He makes a definite point that he will not make any investment unless the management of the company is good, and if the management of the company is good, why would he change it? And he proves that point. In spite of the fact that Berkshire Hathaway is one of the largest capitalized companies in the world, Buffet has 13 people in his office in Omaha.

We also had a problem as far as the franchisees were concerned. We wanted to be sure that this was something that would work from their point of view. We communicated with them openly, things were worked around, and it ended up well. If the world's greatest investor thought this was something he ought to be investing in, maybe it was worth it.

All of this fit as far as our law firm is concerned. My law firm clearly is the premiere franchise law firm in the upper Midwest. Working with franchise situations gives you a good mixture of business and law.

Not everybody wants to be involved in this sort of practice, and that's one of the wonderful things about law. You have all sorts of options.

I'd like to comment a little about some of the problems facing the corporate world today. We read about Enron and others. The Enron situation doesn't give you much guidance as to what really should be and what shouldn't be the case. I think there are some basic things that are really very important that need to be examined.

First of all, the days when Henry Ford owned Ford or when the Dayton family owned Dayton's are gone. Almost without exception, most major companies have a widespread shareholder body that really is not that effective at anything, and they are particularly not effective in terms of protecting their own interests. What tends to happen many times is that boards of directors are self perpetuating. True, the shareholders vote on them, but they vote on whoever is presented to them, so that it really becomes kind of a self perpetuating situation.

Boards of directors have a greater tendency to be responsible to management than to the shareholders. The result of this is manifest in some of the extreme things that you read about that get the approval of a board of directors. What can the shareholders do about it? If the shares are in funds, it's hard for the funds to be effective because they have the same basic problem in their funds that they have trying to correct the corporation. The result is that nothing works out all that productively.

And what about independent auditors? Obviously the Arthur Anderson situation was extreme. But, again, it's extremely difficult to see how the auditing function can be performed when they're also doing countless other things for the company and have such a tremendous amount of income coming from the company. How can they be in a totally independent position? Fortunately, we now are making some progress within the SEC, but we still have a question of how we get a greater role for shareholders.

If you have any questions that you want me to muddle with, I will be happy to do so.

*Student Question: What did you do with Dairy Queen to turn it around so that the franchisor was in a more beneficial position with the franchisee?*

Mr. Mooty: Well, a lot of things and a lot of hard work. But the basic thing is you start with a franchise agreement that applies to any new franchise. That prevents a continuation of the problem. Second, by acquiring territories, we were often able to improve things as far as the agreements were concerned. For example, when we first became involved, the Texas territory was paying nothing to the central system and they had about 20% of the business. I got the job of talking to the fellow who owned the Texas system. He said, "Well, you guys know something about car rental, but I haven't seen that you know how to put the curl on the cone yet. When you do, come back and we'll talk about it."

*Student Question: From a law firm perspective, what do you think is the value of an MBA?*

Mr. Mooty: I will give you a prejudiced answer because of my past. In some areas this may not be true, but in the areas that I'm involved in, the more that you know about how to conduct a business

the better off you are. A majority of lawyers don't really know how to totally analyze a financial statement.

If you are going to end up practicing corporate law, it would definitely be an advantage to have that degree. The big question is whether it is worth the time to get it? I think it all depends on the individual. Some people have not had a lot of exposure to the things taught in a business school. So it makes more sense than for those people. I do think that anything that will enhance your knowledge of business affairs is beneficial if you are going to end up going into corporate law.

*Student Question: We've heard that if we're going to have careers as lawyers, we best take some sort of introductory accounting. Is it worthwhile to study accounting at this point?*

Mr. Mooty: Frankly, I think understanding accounting is important for any lawyer. Even if you are in litigation and settling a matter, you need to understand what the tax consequences are. That doesn't mean that you can't have other people you work with provide that for you. But, in my experience, accounting is critical in negotiations.

When I handled the sale of the Vikings, they had twelve owners who basically said, "You go ahead and handle the sale." We looked at over thirty different prospects. We set up two due diligence rooms. We brought in the lawyers and the accountants and guaranteed them confidentiality.

This is not a real case, but it is parallel. Let's say you owned the Chicago Blackhawks. You've wanted to get even with the Halis family for years, so you really want to beat the Bears and you want to get the Vikings in order to do it. You want confidentiality because the minute that it is known that you are trying to buy the Vikings, it's also known that you have to sell the Blackhawks. You can't own the Blackhawks and the Vikings at the same time.

Anyway, when you're trying to work on a transaction like that there are many accounting aspects to it. And sure, you can always get assistance from accounting people. But I think that if you are trying to negotiate something you better understand it yourself and not depend on somebody else to do it.

*Student Question: As an attorney, do you find that your clients are interested in having you come up with ways to grow their businesses and protect their businesses, or do they come to you more with ideas?*

*Does it work better if the client the attorney is generating new avenues to develop business?*

Mr. Mooty: That is a two-way street. It is important to get the full input from the client, because the client invariably has information that you don't have. By the same token, it is important for a lawyer to be creative.

The client is not coming to you to have you confirm his ideas most of the time. He would prefer to have a better idea. You want to listen to what they have to say because often they have a lot of insight that you don't have. Nevertheless, if you are going to really perform for a client you have to be in a position, after you understand his business, to be creative and come up with solutions. The difference between being a skilled professional and not being a skilled professional is the ability to add something.

*Student Question: Do you think lawyers can sit on boards of directors for corporations and have their law firms also represent those corporations?*

Mr. Mooty: Some malpractice insurance carriers are very reticent as it relates to coverage. At this time, they're not as concerned with service on a board, but they may limit coverage if you are an officer of a company.

My own feeling is that it is fraught with some of the same problems that the accounting people have and I think that it has to be very carefully watched. It may depend on the nature of the corporate structure in terms of ownership. It probably is going to be increasingly difficult for lawyers to be on the board of directors of companies that they provide legal services to.

*Student Question: I noticed in Twin Cities Business Monthly that you have been active in Minnesota politics. Has that been beneficial to your law practice or business interests, or is it just a passing interest of yours?*

Mr. Mooty: I was really very involved at one point. I served as acting chair of the Minnesota Republican Party. And my firm was gracious enough to let me do it, but it wasn't for very long. Did it have any great impact on generating business? I don't think so. But I did meet a lot of people, and once in a while lightning strikes. And while I don't think that it is more beneficial than other civic involvement, I have enjoyed it.

*Student Question: What do you think are the keys to the successful management of a corporation or a law firm for that matter?*

Mr. Mooty: Well, this is really trite, but I think that the main thing in both places is people -- how you deal with people. As you probably already know, my firm has had a couple of awards for being one of the best places to work.

You have to start with the people whether you're in a business or a law firm. And that means you have to start with all the people. In a law firm, that's not just the senior partners -- it means everybody. The same is true in any business. If you don't treat your people well and they are not a happy group of campers, it is very hard to be successful. And it's not easy to accomplish -- you have to work hard.

*Professor John Matheson: John, I'll take the prerogative of asking the final question. Some of our students may not realize that business development has become a big part of becoming a partner in many law firms -- law firms expect the people who want to become partners to bring business into the firm. What suggestions would you have for the young lawyer or even the law student for starting the process of developing clients and business development?*

Mr. Mooty: It is certainly true that the development of your own practice is a very important thing in almost any law firm whether small or large. What can you do about it? My experience says that the single best way that you have of developing a client base is to do a good job with whatever you do in the practice of the law.

If you have done a good job and the client tells somebody else that you have done a good job -- that is the single best way. Even with one client -- you do a good job and it may be that they have five other things that they could bring to you that they're bringing to somebody else. So, superb performance is the single most important thing.

The second most important thing is to be involved in activities where you have a chance to meet people who might be clients. The question earlier was whether getting into politics is an answer. It may be to some people. But, whatever you're doing and involved in, you're meeting people who are potential clients.

I am glad that you asked that question because it is a very important part of the law and you will not be as successful if you don't develop a client base that has some kind of loyalty to you.